IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.1035/2000

Surendra Pratap Dhingra

Versus

State & Anr.

DATE OF ORDER :: 20/09/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. N.S. Shekhawat for Mr. M.K. Kaushik, for petitioner
Mr. Arun Sharma, Public Prosecutor for State
Miss Arti Sharma for Mr. Ashvin Garg, for respondent

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Instant petition has been filed by accused-petitioner assailing the order of Court of Revision dated 16th June, 2000 whereby cognizance was taken against him u/s.420 IPC and while doing so, the order of learned trial Judge dated 10th June, 1994 discharging accused-petitioner has been set aside.

Facts, which require for necessary adjudication, are that complainant respondent No.2 Kishori Shyam, who is a Dealer of Blow Plast Ltd., filed a complaint for offence u/ss.420, 468 & 406 IPC in which it was alleged that goods were supplied to him on 26th December, 1991 vide Bill No.2250 & 2251 of a sum of Rs.17,475.25 Paisa & Rs.12,373.75 Paisa – against which payment was made by complainant after deducting commission on 28th December, 1991 for a total sum of Rs.21,800/-

of which receipt was also handed over to him by the authorized person namely; the accused-petitioner herein. It has further been alleged that at a later stage, one another Agent of the Company namely; Mr. Mukherjee came and to whom for the same transaction further payment of Rs.21,800/- was made and immediately when this fact came to his notice that double payment has been made by him. The accused were contracted and the second payment was considered to be advance payment for further delivery, but neither it was adjusted nor it was shown in the statement of account supplied to him by the Company. After investigation, challan was filed against accused-petitioner along with one co-accused Mukherjee u/s.420 IPC. It is relevant to mention that since other accused Mukherjee remained absconder the proceedings kept pending against him u/s.173(8) Cr.P.C. and specific reference has been made in the charge sheet. Learned trial Judge while framing charge considered the entire material and observed that so far as present accused petitioner Dhingra is concerned, the payment of Rs.21,800/- which he received from the complainant reference has been made in the statement of account which was supplied to the complainant by the Company and he was not a defaulter at any stage and from the material which has come on record no case against accused-petitioner u/s.420 IPC is made out and finally he was discharged from the offence u/s.420 IPC vide order dated 10th June, 1994. Against which complainant filed a revision petition before the learned District Judge - at this stage without

giving notice to the accused-petitioner, the same was allowed. Since that has caused prejudice to petitioner, the order of the Court of Revision was challenged by him by filing Misc. Petition No.643/99. Since the order was passed by the Court without hearing to the accused-petitioner on this ground alone this court allowed the misc. petition vide order dated 26th July, 1999 and the matter was remanded back to the Court of Revision to hear the matter afresh. The Court of Revision after hearing accepted the revision petition preferred by complainant and framed charge against accused-petitioner u/s.420 IPC vide order dated 16th June, 2000.

The main thrust of the counsel for petitioner is that so far as the present petitioner and Mr. Mukherjee is concerned, money which he accepted in regard to the goods supplied to the complainant he handed over the receipt and even from the statement of account of the Company which has been supplied to the complainant, it is credited to his account and if the second payment if at all has been received by Mr. Mukherjee of which account is not made available in the Company, atleast he cannot be held responsible for it and there is no prima facie material available on record to frame charge against him u/s.420 IPC. Counsel further submits that a suit for recovery has been filed by complainant of which reference has been made in his statement which was recorded during investigation u/s.161 Cr.P.C. and this being a civil dispute a colour has been given to it so that by this method

petitioner can be prosecuted which is otherwise not legally permissible under law.

Counsel for respondent has supported the order of the Court of Revision and submits that twice payment was made of Rs.21,800/- for one and the same transaction to accused Dhingra and co-accused Mukherjee and even the statement of account made available to the complainant payment of Rs.21,800/- is accepted by the Company, but later payment is not accounted for and it is a matter of evidence which can be considered only at the stage of trial and as such the Court of Revision has not committed any error in framing charge against accused-petitioner u/s.420 IPC. Counsel further submits that at this stage while framing charge only prima facie material is to be looked into as to whether the offence from the complaint, evidence and statement recorded is made out or not. So far as the detail inquiry is concerned, it is not required to be made at this stage and can be considered only at the stage of trial, as such when prima facie case of offence being committed is made out, no error has been committed by learned Court of Revision in framing charge against him and certainly what has been urged by counsel for petitioner can be his defence at the stage of trial and not to be examined at this stage.

I have considered the submission of counsel for parties and perused the order impugned.

It is true that while framing charge against accused-petitioner only prima facie material is to be looked into which is relevant to examine as to whether the charge against accused-petitioner is made out or not and roaming inquiry is not require at this stage.

But, in the facts of instant case, even as per written complaint filed by complainant, the money accepted by accused-petitioner Dhingra is shown in the accounts of the Company and he has handed over receipt and even the Company in its correspondence at no stage has disputed about the money deposited by accused-petitioner by which any adverse inference can be drawn and the statement of account supplied to the complainant has also mentioned the sum of Rs.21,800/- deposited and learned trial Judge prima facie examined the complaint and the statements recorded u/s.161 Cr.P.C. and after his due application of mind prima facie arrived to a conclusion that no charge against accused-petitioner is made out and finally discharged him from offence u/s.420 IPC, but the Court of Revision has not considered and looked into the material which came on record during investigation and observed that inquiry is not required to be made at the stage of framing charge against accused-petitioner. It is true that detail inquiry is not required, but prima facie it has to be looked into by the Court of Revision on the basis of material as to whether criminal offence has been committed or not.

The learned trial Judge has discharged the accused from the offence u/s.420 IPC which has been completely misread by the Court of Revision and this court finds substance that even from prima facie material which came on record, no offence atleast against accused-petitioner u/s.420 IPC is made out.

Consequently, the misc. petition stands allowed. The order of the Court of Revision dated 16th June, 2000 framing charge u/s.420 IPC against the accused-petitioner is hereby quashed and set aside. Record be sent back to learned trial court, who is directed to proceed further with the matter, in accordance with law.

[AJAY RASTOGI],J.